

T. A. P. asks the Utah Labor Commission to review Administrative Law Judge Marlowe's dismissal of Ms. P.' claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

Ms. P., a Utah resident, works as a flight attendant for Continental Airlines. She is based out of New Jersey. She was injured while working for Continental in Rio de Janeiro, Brazil. She filed an Application For Hearing with the Commission on April 11, 2002, to compel Continental and its insurance carrier, National Union Fire (referred to jointly as "Continental"), to pay benefits for her injury under Utah's workers' compensation system.

On November 19, 2003, Judge Marlowe granted Continental's motion to dismiss Ms. P.'s claim. In dismissing the claim, Judge Marlowe ruled that Ms. P.'s out-of-state injury was not within the scope of the Utah Workers' Compensation Act. Ms. P. then asked the Commission to review Judge Marlowe's conclusion.

FINDINGS OF FACT

For the purpose of determining whether Ms. P.'s claim was properly dismissed without a hearing, the facts alleged by Ms. P. must be accepted as true. Those facts are summarized as follows.

Continental Airlines is incorporated in Delaware and headquartered in Houston. It is licensed to do business in Utah and maintains various operations within this state.

Ms. P. is employed by Continental as a flight attendant. Continental first hired Ms. P. in California. Thereafter, she was based in Texas, Colorado, New York and New Jersey. After being assigned to her New Jersey base, Ms. P. chose to reside in Utah. Continental provides free transportation for Ms. P. between Utah and New Jersey.

DISCUSSION AND CONCLUSION OF LAW

Ms. P. seeks benefits under the Utah Workers' Compensation Act for injuries suffered in Brazil while working for Continental. Section 34A-2-405(1) of the Act limits the extent of coverage for such injuries:

... if an employee who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of employment outside this state, the employee ... shall be entitled to compensation according to the

law of this state.”

Ms. P. contends she is “regularly employed” by Continental in Utah and, therefore, falls within the coverage of §34A-2-405(1). The Commission disagrees. Even when the facts of Ms. P.’s employment relationship with Continental are viewed in the light most favorable to Ms. P., it is clear that Ms. P.’s employment was localized in New Jersey. She was not regularly employed by Continental in Utah. The Commission therefore concurs with Judge Marlowe’s determination that Ms. P.’s accidental injuries of May 10, 1998, are not compensable under the Utah Workers’ Compensation Act.

ORDER

The Commission affirms Judge Marlowe’s Order dismissing Ms. P.’s claim and denies Ms. P.’s motion for review. It is so ordered.

Dated this 8th day of April, 2004.

R. Lee Ellertson, Commissioner